

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 418 to 421 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHHOTUBHAI PARBHUBHAI PATEL

Versus

CHAMPAKLAL MANUBHAI SOPARIWALA

Appearance:

MR DEVANG T SHAH for Petitioner

MR MA KHARADI for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 22/04/96

ORAL(COMMON) JUDGEMENT

1. Petitioners in this group of CRAs are the original defendants and the respondents are the original plaintiffs. Suit is filed by the plaintiffs for specific performance of agreement to sale and in the alternative for damages as well as for permanent injunction. At a point of time, when the agreement to sale was executed in each case, there was in existence the order passed by the

competent authority granting use for non-agricultural purpose. However, subsequently, such permission for nonagricultural purpose is cancelled by the Special Secretary(Appeals), Revenue Department. It is stated to the court that the decision of the Special Secretary(Appeals), Revenue Department is under challenge before this court in Special Civil Applications. It is also stated before the court that stay against order passed by the Special Secretary(Appeals), Revenue Department is granted.

2. In response to the service of summons in the aforesaid Civil Revision Applications the petitioner-defendants have appeared and filed their written statements and contended that the plaintiffs are nonagriculturists, that they do not cultivate the lands personally within the radius of 5 Kms, that they do not reside within the radius of 15 Kms of the land in question and that the land is of agricultural land. They also raised contention that the transaction in question is hit by Sections 43 & 63 of Bombay Tenancy & Agricultural Lands Act.

3. In view of the aforesaid pleadings, the defendants by tendering application, interalia, prayed for issuances at which were framed by the trial court were required to be referred to Mamalatdar & ALT under section 85-A of the Act. Said applications are rejected by the trial court by judgment and order, dated 22.1.1996.

4. It is against the aforesaid judgment and order in each CRA that the petitioners have come to this court u/sec 115 of C.P.Code.

5. Mr.D.T.Shah, Ld.advocate for petitioners has seriously challenged the order by submitting that looking to the provisions of section 85 read with Section 85A of the Tenancy Act and the decision of the Apex Court in the case of GUNDAJI SATWAJI SHINDE vs RAMCHANDRA BHIKAJI JOSHI reported in AIR 1973 SC 653 the trial court was not justified in rejecting the application. Before the Supreme Court the plaintiff sued for specific performance of sale of agricultural land governed by the provisions of Tenancy Act in the civil court and the defendant has appeared and raised contention that in view of the provisions contained under section 63 of the Tenancy Act the plaintiff not being agriculturist is barred from purchasing the land. Supreme Court took the view that such issue would directly and specifically arise whether the plaintiff is an agriculturist or not. Such issue

would fall within the exclusive jurisdiction of the Mamalatdar & ALT and it is incumbent upon the civil court to refer the issue to the competent authority under the Tenancy Act and the civil court has no jurisdiction to decide or to deal with the same.

6. In view of the aforesaid decision of the Apex Court which is in every respect binding on this court the trial court was not justified in rejecting the application as the issues framed were required to be referred to the court being Mamalatdar & ALT under the Bombay Tenancy Act. The judgment and order of the trial court in each case is therefore quashed and set aside and the application of the defendant in each case is granted and it is further directed that the Issue Nos 8 to 11 be referred to the Mamalatdar & ALT as prayed for by the defendant. Rule in each CRA is made absolute accordingly. No costs. DS permitted.

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